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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/661,153	09/13/2000	Matthew A. Howard III	UIOWA-8PAD1	7887

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EXAMINER

SERKE, CATHERINE

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/661,153

Applicant(s)

HOWARD III, MATTHEW A.

Examiner

Catherine Serke

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 8-10, 12-15, 40-44 and 52-79 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-10, 12-15, 40-44, 52 and 63-70 is/are allowed.
- 6) ☒ Claim(s) 53, 54, 56, 58, 62, 71, 73 and 77 is/are rejected.
- 7) ☒ Claim(s) 55, 57, 59-61, 72, 74-76, 78 and 79 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 53-54, 58, 62, 71, 73, and 77 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosenberg (US Pat# 5,100,395).

Rosenberg discloses a plurality of microinfusion catheters (4,6,8) disposed non-coaxially side-by-side with respect to one another (see figure 1). The device also includes a pump (see 2:52), a plurality of drug delivery ports along the length of the catheter (12), and a macrocatheter (9). Since the prior art device structure is essentially a tubular conduit with a lumen, distal ports and a pump the device is considered to be configured to receive a drug and infuse the drug into the hypothalamus of a patient. The recitation of the type of drug is also function and for the same reasons above the device is capable of infusing any drug including one that is configured to affect the weight of the patient.

Claims 53-54, 58 and 62 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones (US Pat# 4,248,224).

Jones discloses a plurality of microinfusion catheters (16,18) disposed non-coaxially side-by-side with respect to one another (see figure 1 and 2). The device also includes a pump

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(inherent for bypass operations) and a macrocatheter (14). Since the prior art device structure is essentially a tubular conduit with a lumen, distal port and a pump the device is considered to be configured to receive a drug and infuse the drug into the hypothalamus of a patient. The recitation of the type of drug is also function and for the same reasons above the device is capable of infusing any drug including one that is configured to affect the weight of the patient.

Claims 53-54, 56 and 62 are rejected under 35 U.S.C. 102(b) as being anticipated by Delgado (US Pat# 3,640,269).

Delgado discloses a plurality of microinfusion catheters (18) disposes non-coaxially side-by-side with respect to one another (see figure 1). The device also includes a pump (26) that can be controlled percutaneously. Since the prior art device structure is essentially a tubular conduit with a lumen, distal ports and a pump the device is considered to be configured to receive a drug and infuse the drug into the hypothalamus of a patient. The recitation of the type of drug is also function and for the same reasons above the device is capable of infusing any drug including one that is configured to affect the weight of the patient.

Claims 53-54, 58 and 62 are rejected under 35 U.S.C. 102(b) as being anticipated by Safer et al (US Pat# 5,308,320).

Safer discloses a plurality of microinfusion catheters (270,271) disposes non-coaxially side-by-side with respect to one another (see figure 4,5). The device also includes a pump (inherent for the application of the device), a plurality of drug delivery ports along the length of the catheter (276 or 277), and a macrocatheter (251). Since the prior art device structure is essentially a tubular conduit with a lumen, distal ports and a pump the device is considered to be configured to receive a drug and infuse the drug into the hypothalamus of a patient. The

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recitation of the type of drug is also function and for the same reasons above the device is capable of infusing any drug including one that is configured to affect the weight of the patient.

Claims 53-54 and 62 are rejected under 35 U.S.C. 102(e) as being anticipated by Nakao (US Pat# 5,458,582).

Nakao discloses a plurality of microinfusion catheters (32) disposed non-coaxially side-by-side with respect to one another (see figure 2). The device also includes a pump (see 1:62) and a plurality of drug delivery ports along the length of the catheter (34). Since the prior art device structure is essentially a tubular conduit with a lumen, distal ports and a pump the device is considered to be configured to receive a drug and infuse the drug into the hypothalamus of a patient. The recitation of the type of drug is also function and for the same reasons above the device is capable of infusing any drug including one that is configured to affect the weight of the patient.

#### ***Allowable Subject Matter***

Claims 8,40,9-10,12-15,41-44,52 and 63-70 are allowed.

Claims 55,57,59-61,72,74-76 and 78-79 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

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*Conclusion*

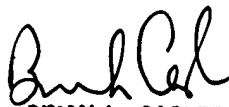
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Pat#s 4,445,501; 5,353,807; 5,425,382; 5,676,673; 4,710,177; 5,066,278; 5,254,084; 4,692,146 and 5,125,888 all disclose analogous inventions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Serke whose telephone number is 703-308-4846. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2192.

Catherine Serke   
June 17, 2003

  
BRIAN L. CASLER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY